

**Section II. (Amendments to the Drawings)**

Please replace Figures 1-5 of the application with the enclosed replacement sheets for Figures 1-5 (five sheets) contained in **Appendix A (Replacement Sheets of Drawings)** hereof.

The enclosed replacement sheets obviate the Examiner's objection to previously submitted Figures 1-5, wherein the photographs failed to show the subject matter as described in the specification in a clear manner.

The replacement drawings are of proper form, and their entry is respectfully requested.

**Section III. (REMARKS)**

The pending claims in the application are 1-21.

**Request for Rejoinder Reminder**

Applicant respectfully requests examination of kit claims 18-19 and method claim 20 upon allowance of article claims 1-17 and 21.<sup>1</sup> Towards that end, method claim 20 has been amended to depend from pending article claim 1.

**Amendment to Claims 1 and 17**

Claim 1 has been amended herein to recite:

**“A centrifuge tube having a closed distal end and an open proximal end, with integral hinge elements at opposing sides thereof for facilitating compression flattening of the centrifuge tube, wherein said integral hinge elements consist of outwardly yielding hinge elements.”** (emphasis showing added limitation(s))

Support for this amendment can be found in Figures 1, 8, 11 and 12.

Claim 17 has been amended herein to recite:

**“A centrifuge tube having a closed distal end and an open proximal end, with an elongate main body portion of generally cylindrical form, with integral hinge elements at opposing sides of the main body portion, extending longitudinally along at least a portion of the length thereof, whereby manual compressive pressure exerted on respective exterior surfaces of the main body portion between the integral hinge elements will effect flattening of the tube at a region of compression of the main body portion, wherein the centrifuge tube is of sufficient size and shape for placement in a centrifuge.”** (emphasis showing added limitation(s))

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<sup>1</sup> Rejoinder was previously requested in the response to the April 14, 2005 Office Action, filed May 16, 2005.

Support for this amendment can be implicitly found in the Abstract (i.e., "for subsequent centrifugation processing").

New claim 21 has been added herein and includes the limitations of original claims 1, 6 and 14.

No new matter has been added herein.

**Rejection of Claims and Traversal Thereof**

In the June 2, 2005 Office Action:

claims 1-7, 10-13 and 15-17 were rejected under 35 U.S.C. §102(b) as being anticipated by Tobler (U.S. Patent No. 5,255,808);

claims 1-5, 7, 10-14 and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by Kasboske (U.S. Patent No. 6,170,712);

claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kasboske; and

claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tobler.

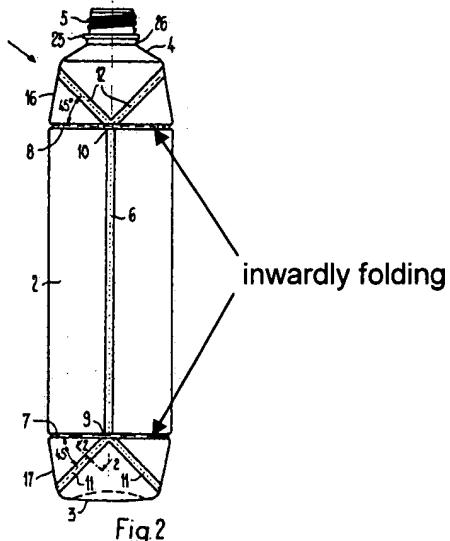
These rejections are traversed and reconsideration of the patentability of the pending claims is requested in light of the following remarks.

**Rejections under 35 U.S.C. §102**

1. In the June 2, 2005 Office Action, claims 1-7, 10-13 and 15-17 were rejected under 35 U.S.C. §102(b) as being anticipated by Tobler (U.S. Patent No. 5,255,808). Applicant traverses such rejection.

Tobler relates to a foldable bottle which has good stability during use in a completely and partially filled state and, in the empty state, can be brought into a flat form by simple folding.

A representative embodiment of the Tobler foldable bottle is illustrated in Figure 2,<sup>2</sup> which has been reproduced hereinbelow for ease of reference.



In order to fold the Tobler bottle as flat as possible, e.g., similar to the folding of paper bags, the Tobler bottle must have both outwardly and inwardly yielding folding lines. In Figure 2, the inwardly folding lines are represented by reference numbers 7 and 8.

Applicant has amended claim 1 to recite:

**"A centrifuge tube having a closed distal end and an open proximal end, with integral hinge elements at opposing sides thereof for facilitating compression flattening of the centrifuge tube, wherein said integral hinge elements consist of outwardly yielding hinge elements."** (emphasis showing added limitation(s))

Comparing the Tobler teaching with applicant's claim 1, it can be seen that applicant's claim 1 limits the hinge elements to outwardly yielding hinge elements. In contrast, Tobler teaches the inclusion of both inwardly and outwardly yielding hinge elements.

It is well established, as a matter of law, that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir.

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<sup>2</sup> The other embodiments of the Tobler bottle all prescribe the same folding principle as the bottle of Figure 2.

1987). Further, to be anticipatory, the elements in the prior art reference must be arranged as required by the claim. See, *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Clearly, Tobler, which requires both inwardly and outwardly yielding elements, does not satisfy this standard. Accordingly, Tobler does not anticipate applicant's claim 1 and claims depending therefrom.

Applicant's claim 17 recites:

**"A centrifuge tube having a closed distal end and an open proximal end, with an elongate main body portion of generally cylindrical form, with integral hinge elements at opposing sides of the main body portion, extending longitudinally along at least a portion of the length thereof, whereby manual compressive pressure exerted on respective exterior surfaces of the main body portion between the integral hinge elements will effect flattening of the tube at a region of compression of the main body portion, wherein the centrifuge tube is of sufficient size and shape for placement in a centrifuge."** (emphasis showing added limitation(s))

Comparing Tobler with applicant's claim 17, it can clearly be seen that the Tobler bottle is not sized or shaped for placement in a centrifuge, but rather is a large, foldable storage bottle that would likely collapse at the plurality of folds if subjected to centrifugal forces. In short, Tobler does not teach or suggest every limitation of applicant's claim 17 and as such, does not anticipate applicant's claim 17.

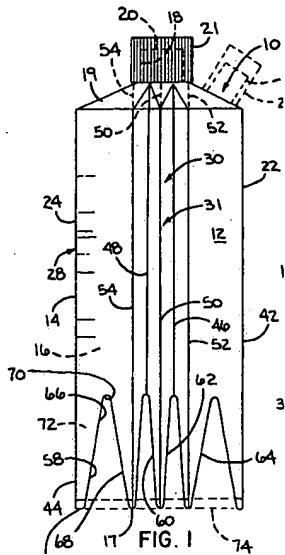
Applicant's new claim 21 includes the limitations of original claims 1, 6 and 14. Referring to the June 2, 2005 Office Action, claim 14 is impliedly novel in view of Tobler. Accordingly, new claim 21 is not anticipated by Tobler.

Applicant respectfully requests withdrawal of the rejection of claims 1-7, 10-13 and 15-17 under §102(b) over Tobler.

2. In the June 2, 2005 Office Action, claims 1-5, 7, 10-14 and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by Kasboske (U.S. Patent No. 6,170,712). Applicant traverses such rejection.

Kasboske relates to a container for holding and facilitating dispensing of a substance. The Kasboske container includes a fold structure that causes a part of the container to reposition in a

predetermined manner relative to the rest of the container. A representative embodiment of the Kasboske foldable bottle is illustrated in Figure 1,<sup>3</sup> which has been reproduced hereinbelow for ease of reference.



Comparing Kasboske with applicant's claim 1, it can be seen that applicant's claim 1 limits the hinge elements to outwardly yielding hinge elements. In contrast, Kasboske teaches the inclusion of both inwardly and outwardly yielding hinge elements in the form of an "accordion" fold structure.<sup>4</sup>

Accordingly, Kasboske, which requires both inwardly and outwardly yielding elements, does not satisfy the anticipation standard set forth hereinabove and as such, Kasboske does not anticipate applicant's claim 1 and claims depending therefrom.

Comparing Kasboske with applicant's claim 17, it can clearly be seen that the Kasboske bottle is not sized or shaped for placement in a centrifuge, but rather is representative of a squeezable and deformable bottle suitable for consumable products, e.g., ketchup. In fact, Kasboske teaches away from centrifugation by disclosing a deformable bottle for substantially exhausting the entirety of the substance from the container. In short, the Kasboske reference, which relates to

<sup>3</sup> Most of the other embodiments of the Kayboske container prescribe the same folding principle as the container of Figure 1. The only exception is the container of Figure 16, which has been discussed herein.

<sup>4</sup> Another embodiment of Kasboske, specifically Figure 16, includes fold line 182 and 184, with no real indication regarding inwardly or outwardly yielding hinge elements. In fact, Figure 16 and the accompanying disclosure is ambiguous regarding the article and process of using the article. It is well established that a rejection on grounds of anticipation cannot be predicated on an ambiguous reference. *In re Turlay*, 134 U.S.P.Q. 355, 360 (CCPA 1962).

the complete removal of a substance from the bottom of a container, e.g., the ketchup from the bottom of a bottle, is converse to applicant's claim 17 relating to a centrifuge tube which is of sufficient size and shape for placement in a centrifuge.

Applicant's new claim 21 includes the limitations of original claims 1, 6 and 14. Referring to the June 2, 2005 Office Action, claim 6 is impliedly novel in view of Kasboske. Accordingly, new claim 21 is not anticipated by Kasboske.

Applicant respectfully requests withdrawal of the rejection of claims 1-5, 7, 10-14 and 17 under §102(b) over Kasboske.

**Rejections under 35 U.S.C. §103**

1. In the June 2, 2005 Office Action, claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being anticipated by Kasboske. Applicant traverses such rejection.

As introduced hereinabove, Kasboske does not motivate, teach or suggest every limitation of applicant's claim 1, upon which rejected claims 8 and 9 depend, specifically the limitation that said integral hinge elements are outwardly yielding hinge elements, and therefore a *prima facie* case of obviousness has not been made. See, *In re Royka*, 180 U.S. P.Q. 580 (CCPA 1974).

Analogously, Kasboske does not motivate, teach or suggest every limitation of new claim 21, specifically the limitation relating to the concave depressions on the exterior surface of the tube, and therefore, applicant's claim 21 is non-obvious in view of Kasboske.

Withdrawal of the rejection of claims 8 and 9 under §103 in view of Kasboske is respectfully requested.

2. In the June 2, 2005 Office Action, claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being anticipated by Tobler. Applicant traverses such rejection.

As introduced hereinabove, Tobler does not motivate, teach or suggest every limitation of applicant's claim 1, upon which rejected claims 8 and 9 depend, specifically the limitation that said integral hinge elements are outwardly yielding hinge elements, and therefore a *prima facie*

case of obviousness has not been made. See, *In re Royka*, 180 U.S. P.Q. 580 (CCPA 1974).

Analogously, Tobler does not motivate, teach or suggest every limitation of new claim 21, specifically the limitation relating to the generally triangular cross-sections of the integral hinge elements, and therefore, applicant's claim 21 is non-obvious in view of Tobler.

Withdrawal of the rejection of claims 8 and 9 under §103 in view of Tobler is respectfully requested.

**Fees Payable**

One (1) independent claim has been converted into a dependent claim and one (1) independent claim has been added herein. With the conversion and addition, the present application includes 21 claims, three (3) of which are independent. Thus, an added claims fee of \$25.00 is due at this time.

The total fee of \$25.00 is authorized to be charged in the attached Credit Card Authorization Form. Authorization is also hereby given to charge any deficiency in applicable fees for this response to Deposit Account No. 08-3284 of Intellectual Property/Technology Law.

**Conclusion**

Claims 1-17 and 21 are now in form and condition for allowance. Favorable action is requested. If any issues remain, Examiner Fidei is requested to contact the undersigned attorney at (919) 419-9350 to resolve same.

Respectfully submitted,



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**APPENDIX A**

**Replacement Sheets of Drawings**